

REMARKS

In the Office Action, the Examiner rejected claims 1-11, 13, 14, 19-20, 28-33, and 35 under 35 U.S.C. 102 (b) as being anticipated by Nielsen; rejected claims 21-24 under 35 U.S.C. 102(b) as being anticipated by Feldman; rejected claims 12, 15-18, and 25-27 under 35 U.S.C. 103(a) as being unpatentable over Nielsen; and stated that claim 34 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 32 has been amended to include the limitations of claim 34 and is thus believed to be allowable.

In the rejection of claims 1-11, 13, 14, 19-20, 28-33, and 35 under 35 U.S.C. 102 (b), the Examiner stated that "as shown in Figures 5-6, Nielsen teaches a device . . . wherein the earpiece is configured for use in either ear."

However, it is respectfully submitted that Nielsen does not teach that the earpiece is configured for use in either ear. The earpiece or open ear mold 34 is "produced in the traditional manner by making an impression of the user's ear" (column 5, line 25 and 26). Since the earpiece is made by making an impression of the user's ear, the earpiece clearly conforms to the ear for which the impression was made. Indeed, the very concept of making an impression is directed to achieving a fit that is specifically intended for the impressioned ear and no other ear.

Left and right ear's tend to be substantially mirror images of one another.

Impressions made of the left ear do not fit into the right ear and visa-versa. That is why a

separate impression must be made for each ear if earpieces are to be made for each ear (at least according to the prior art – the present invention solves this problem, such as with a symmetrical earpiece).

The Nielsen device is not symmetric about any axis thereof. Such symmetric is antithetical to the use of impression.

By way of contrast, the earpiece of the present invention does fit both ears. It can be symmetric about a horizontal axis (axis A of Figure 1), so that when flipped over to be placed in the opposite ear, a mirror image of the unflipped earpiece is formed.

This would not happen with the earpiece of Figures 5 and 6 of the Nielsen reference. Rather, the Nielsen earpiece is not symmetric and flipping it over or otherwise positioning it for use in the opposite ear does not result in a mirror image of the earpiece. It also does not result in a configuration of the Nielsen earpiece that is suitable for use in the opposite ear. Thus, the Nielsen earpiece is not suitable for use in both ears and is not configured for such use.

It is respectfully submitted that none of the cited references, taken either alone or in combination with one another, either disclose or make obvious an earpiece that "is configured for use in either ear," as recited in independent claims 1, 22, 25, 28, 29, 30 and 35 (all of the presently pending independent claims except claim 32, which is believed to be allowable because it incorporates the limitations of claim 34 as discussed above).

It is also respectfully submitted that the dependent claims are independently patentable with respect to the independent claims. For example, dependent claims 5-7

LAW OFFICES OF
MACPHERSON KYOK CHERN &
HEID LLP
2402 MICHELSON DRIVE
SUITE 210
IRVING CA 92612
(949) 752-7040
FAX (408) 392-9262

recite, among other things, "wherein the earpiece is generally symmetric". Neither the Nielson nor the Feldman reference either discloses or make obvious such construction.

CONCLUSION

It is therefore respectfully submitted that all of the claims of the subject patent application are in condition for immediate allowance. Reconsideration and an early allowance are therefore requested.

If the Examiner has any questions or concerns, a telephone call to the undersigned at (949) 752-7040 is welcomed and encouraged.


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Monique M. Butler

June 28, 2005
Date of Signature

Respectfully submitted,


Norman E. Carte
Attorney for Applicants
Reg. No. 30,455

LAW OFFICES OF
MACPHERSON KIWOK CHEN &
HEID LLP
2402 MICHELSON DRIVE
SUITE 210
IRVINE CA 92612
(949) 752-7040
FAX (949) 352-8260